

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

605 FIFTH PROPERTY OWNER, LLC,

*Plaintiff,*

-against-

ABASIC, S.A., f/k/a ABASIC, S.L.,

*Defendant.*

Case No. 22-cv-04590-DLC

PROPOSED JUDGMENT

**WHEREAS**, by motion dated August 19, 2022, Plaintiff, 605 Fifth Property Owner, LLC (“Plaintiff”) moved to amend its complaint to conform to the proof of damages for rent accrued during litigation, and for summary judgment on its claims and to dismiss Defendant Abasic, S.A., f/k/a Abasic, S.L.’s (“Defendant”) affirmative defenses (ECF Doc Nos. 16-21, the “Motion to Amend and for Summary Judgment”);

**WHEREAS**, by Memorandum of Law in Opposition filed on September 9, 2022, Defendant requested a stay of the action pending its appeal of prior judgments entered by this Court in a prior action between the parties entitled, *605 Fifth Property Owner, LLC v. Abasic, S.A.*, Case No. 21-cv-00811-DLC (ECF Doc No. 23);

**WHEREAS**, In reply, Plaintiff opposed Defendant’s request for a stay of the action and requested that the Court deem Plaintiff’s Complaint amended to conform to the additional evidence submitted by Plaintiff to permit recovery of the rent, additional rent and attorneys’ fees that accrued while this action is pending through the date of Plaintiff’s reply on September 23, 2022;

**WHEREAS**, by opinion and order dated November 8, 2022 (ECF Doc. No. 28), the Court denied Defendant’s request for a stay and granted Plaintiff’s Motion to Amend and for

Summary Judgment, and held that Defendant is liable to Plaintiff for \$1,254,729.07, the amount sought by Plaintiff through September 23, 2022, as well as attorney's fees and legal costs (the "Opinion and Order");

**WHEREAS**, by separate Order dated November 8, 2022 (ECF Doc No. 27) the court directed that Plaintiff submit a motion for attorney's fees no later than November 28, 2022 and that Defendant submit a response no later than December 5, 2022.

**NOW**, on the application of Belkin Burden Goldman, LLP, attorneys for Plaintiff:

**IT IS HEREBY ORDERED**, that Plaintiff's second claim for relief in its Complaint for attorneys' fees and expenses is severed and will be determined by the Court by separate order and judgment; and

**IT IS HEREBY ORDERED and ADJUDGED**, that Judgment is entered in favor of Plaintiff 605 Fifth Property Owner, LLC, with address at 924 Bergen Avenue, Suite 513, Jersey City, New Jersey 07306, and against Defendant Abasic, S.A. f/k/a Abasic, S.L., with address at Passeig Del Mare Nostrum 15, 08039, Barcelona, Spain, in the sum certain amount of \$1,254,729.07, with pre-judgment interest at the rate of eighteen (18%) per annum<sup>1</sup> from September 23, 2022 through November 10, 2022, ~~in the amount of \$30,319.73<sup>2</sup>~~ plus per diem *de*

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<sup>1</sup> Section 10.02 of the parties' Store Lease [ECF Doc. No. 17.2] provides for interest as follows:

In addition to the administrative service charge described in Section 10.01 and all other rights and remedies provided Landlord, all amounts payable hereunder which remain unpaid for five (5) days after their respective due dates shall bear interest from the date that the same became due and payable to and including the date of payment, whether or not demand is made therefor, at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum legal interest rate allowed in the State of New York.

<sup>2</sup> Plaintiff's interest calculation is as follows:

- \$1,254,729.07 x 18% = \$225,851.23 per annum /365 days = \$618.77 per diem
- September 23, 2022 to November 10, 2022 = 49 days
- 49 days x \$618.77 per diem = \$30,319.73 interest through November 10, 2022, together with per diem interest of \$618.77 until the date of judgment.

*de*

interest thereafter at the rate of \$618.77 per day through the date of entry of judgment, and costs and disbursements as taxed by the clerk; so that the amount of the judgment against Defendant Abasic, S.A. is \$ 1,296,805.<sup>43</sup>, and Plaintiff 605 Fifth Property Owner, LLC, shall have judgment and execution on the judgment therefor.

Dated: New York, New York

Nov. 30, 2022

  
DENISE COTE  
United States District Judge